

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA



CIVIL MINUTES - GENERAL

Case No.	CV 06-6208 GPS (JCx)	Date	September 9, 2010
Title	Kimberly Manfred v. Superstation, Inc.		

Present: The Honorable Audrey B. Collins, Chief United States District Judge

Angela Bridges

None Present

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiff:

Attorneys Present for Defendant:

None Present

None Present

Proceedings: ORDER TO SHOW CAUSE (In Chambers)

Pending before the Court is Plaintiff's motion to extend the filing date for a notice of appeal pursuant to Fed. R. App. P. 4(a)(5), which was filed on August 16, 2010. (Mot. (Docket # 244).) That motion was noticed for a hearing on September 20, 2010. Defendant Superstation, Inc. filed an opposition. (Opp'n (Docket # 245).) Plaintiff failed to file a timely reply. See Local Rule 7-10 (replies due not later than 14 days before noticed hearing date). For the reasons discussed below, Plaintiff is hereby **ORDERED** to show cause no later than September 13, 2010 why her motion should not be dismissed for lack of jurisdiction.

Defendant argues that the Court lacks jurisdiction to entertain the pending motion because it was not filed within the 30-day period prescribed by Fed. R. App. P. 4(a)(5)(A)(i). (Opp'n at 3-6.) Although Defendant failed to cite any Ninth Circuit authority, it appears that Ninth Circuit law dictates that, where a movant fails to bring the motion within that period, a "district court ha[s] no authority under Rule 4(a)(5) to extend the time for filing a notice of appeal." Vahan v. Shalala, 30 F.3d 102, 103 (9th Cir. 1994) (per curiam); see also Alaska Limestone Corp. v. Hodel, 799 F.2d 1409, 1411 (9th Cir. 1986) ("The requirement that motions for extension be filed within thirty days of the original deadline is mandatory and jurisdictional. Thus, Alaska Limestone's failure to make a timely motion to file a notice of appeal out of time prohibits either the district court or this court from reviving its right to appeal." (internal citations omitted)).

The Court also notes that Plaintiff asserts in the alternative that she does not need any extension because her August 6, 2010 notice of appeal was timely under Fed. R. App. P. 4(a)(7)(A)(ii). (See Mot. at 1-3.) Unlike a motion to extend the time to appeal, which is expressly directed under the rules to the district court, see Fed. R. App. P. 4(a)(5)(A) ("[t]he district court may extend the time to file a notice of appeal . . ."), the timeliness of a filed notice of appeal appears to be an issue exclusively for the Ninth Circuit to decide, see United States v. Sadler, 480 F.3d 932, 940 (9th Cir. 2007) ("We, not the district court, are the ultimate arbiters of compliance with the rules governing the appellate process."); see also United States v. Lopez, 562 F.3d 1309, 1313 (11th Cir. 2009) ("Unlike a motion for a new trial, which is within the purview of the district court, this case involves the timing of the filing of a notice of appeal. That is an issue within the purview of this Court, not the district court.")

Accordingly, it appears that the Court may lack jurisdiction to entertain the motion for an

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extension and that it may be beyond the Court's purview to opine on the timeliness of the notice of appeal that was filed. Because Plaintiff failed to file a timely reply brief, she is hereby **ORDERED** to show cause no later than September 13, 2010 why her motion should not be dismissed for lack of jurisdiction. Plaintiff's response is limited to eight pages. The response may address only the two issues raised above, as Plaintiff waived the right to respond to Defendant's other arguments by failing to file a timely reply.

IT IS SO ORDERED.

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